



Update to State Law Criminalizing Illegitimate Emotional Support Animal Requests

On March 26, [House Bill 411](#) became law and will go into effect June 27, 2019.

Here's what you need to know:

- Current law (KRS 383.085) mirrors federal law and agency guidance, outlining an apartment owner or operator's responsibilities to a disabled person who requests a reasonable accommodation for an assistance animal (which covers residents' requests for both service animals and emotional support animals).
 - To learn more about these requirements, refer to the NAA Emotional Support Animals Toolkit (<https://www.naahq.org/advocacy/policy-issues/emotional-support-animals>).
- As the person receiving the request, you may ask the requesting party to provide reliable documentation of the disability-related need for an assistance animal. Kentucky state law defines "reliable documentation" to include documentation from any person with whom the person making the request has or has had a *therapeutic relationship*.
 - HB 411 refines the definition of "therapeutic relationship" as the provision of care in good faith, to the person with a disability by:
 - A licensed clinical social worker who holds a valid, unrestricted state license under (Kentucky licensing law) and who maintains an active practice within the state;
 - A professional counselor who holds a valid, unrestricted state license under (Kentucky licensing law) and who maintains an active practice within the state;
 - An advanced practice registered nurse who holds a valid, unrestricted license under (Kentucky licensing law) and who maintains an active practice within the state;
 - A psychologist who holds a valid, unrestricted state license under (Kentucky licensing law) and who maintains an active practice within the state; or
 - A physician who holds a valid, unrestricted state license under (Kentucky licensing law) and who maintains an active practice within the state.
 - Remember you are prohibited from asking for documentation if the person's disability or disability-related need is readily apparent (e.g. someone who you observe to be visually impaired and is using the assistance of a guide dog).
- HB 411 makes clear that an individual who moves from another state may provide documentation from a health services provider who is licensed in that state, so long as the person with a disability has an ongoing therapeutic relationship with the provider.
 - This definition shall *not* include a health care provider (see definition of "therapeutic relationship") whose primary service is to provide documentation to a person requesting a reasonable accommodation in exchange for a fee.
- Current law in Kentucky makes it a crime to misrepresent oneself or an individual's animal for the purposes of obtaining an assistance animal in housing. The law also prohibits an individual from providing documentation under false pretenses to another for the purposes of obtaining an assistance animal. Misrepresentation of an assistance animal is a violation with a fine of up to one thousand dollars (\$1,000).
 - HB 411 deletes one category (formerly, subsection (6)(c) prohibits "[creating] or [executing] a document that misrepresents an animal as an assistance animal for use in housing") and adds two new categories to the list of prohibited conduct. See new subsections (6)(e) and (f):
 - Engaging in fraud, deceit, or dishonesty in providing documentation to a person as a part of a request for the use of an assistance animal in housing; or
 - Providing documentation as a part of a request for an assistance animal in housing to a person for the primary purpose of obtaining a fee.
- When you are deciding whether to approve or deny the request, consider the following:
 - In situations where the disability or disability-related need are not readily apparent (which would apply to most emotional support animal requests), you have the right to evaluate the request and any reliable supporting documentation to verify the disability-related need for the reasonable accommodation regarding an assistance animal.
 - You may independently verify the authenticity of any supporting documentation that you receive.
 - The NAA Toolkit may be useful as a guide. See the resource to understand the allowable reasons for denial per federal law.

- Other noteworthy provisions of Kentucky's law include:
 - The law reiterates that a person with a disability who is granted a reasonable accommodation for an assistance animal must comply with the rental agreement or any rules and regulations of the property owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises.
 - For example, the resident would be required to comply with an animal addendum or any animal rules that are applicable to all residents, such as requiring all residents to maintain control of their animal at all times or requiring residents to dispose of animal waste left on the property. Noncompliance by the resident would be handled as any other violation per company policy.
 - Be aware that certain rules and requirements that are not related to the behavior and handling of the animal (breed restrictions, size limits, floor restrictions, etc.) do not apply to Assistance Animals.
 - Property owners and operators are prohibited from assessing a pet fee or deposit or any additional rent (pet rent) on the person who requested an assistance animal.
 - Any resident who is granted a reasonable accommodation for an animal remains responsible for any physical damages caused by his or her animal. You may deduct this amount from the resident's security deposit or charge the resident for the cost of repairing the damage, if it is your policy to assess residents for any damage they cause to the premises. Damage amounts that exceed the security deposit may be included in a damages collection lawsuit.
 - Notwithstanding any other law to the contrary, an apartment owner shall not be liable for injuries by a person's assistance animal permitted on the property as a reasonable accommodation.
- HB 411 also makes clear that it is a crime to make a request under false pretenses and provides penalties for the offense of misrepresentation of an assistance animal.
 - A person commits the offense of misrepresentation of an assistance animal if the person knowingly:
 - Misrepresents as a part of a request for a reasonable accommodation to maintain an assistance animal in a dwelling that the person has a disability or disability-related need for the use of an assistance animal;
 - Makes materially false statements for the purpose of obtaining documentation for the use of an assistance animal in housing;
 - Creates or executes a document that misrepresents an animal as an assistance animal for use in housing;
 - Provides a document to another falsely stating that an animal is an assistance animal for use in housing; or
 - Fits an animal, which is not an assistance animal, with a harness, collar, vest, or sign that the pet is an assistance animal for use in housing.
 - Misrepresentation of an assistance animal is a violation with a fine of up to one thousand dollars (\$1,000).
- You should contact corporate headquarters or consult with local legal counsel to determine the best course of action to educate staff and residents on the provisions of the new law. You may want to consider:
 - Inclusion in the lease, lease addenda or reasonable accommodation policy and forms;
 - A write up in the apartment community newsletter; or
 - Clarifying language added to fair housing training or educational materials provided to staff.
- Also, consider the following practical guidance. You should:
 - Develop written policies on how you handle reasonable accommodation requests for animals. You should have a documented process by which you implement those policies at the site level
 - Be sure to document your communications with the requester and retain a copy for your records.
 - Apply your policies and procedures evenly amongst all individuals, whether the request comes by phone, via email or during a face-to-face conversation. Remember consistency is key to avoid a fair housing complaint.
- HB 411 is a state law and, as such, does not exempt you from requirements imposed by the Fair Housing Act, as amended.

For more information, contact:

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